

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES C. KNOX,)
)
Plaintiff,)
)
v.) No. 4:06CV1823 MLM
)
GARY KEMPKER, et al.,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion to proceed in forma pauperis on appeal. The motion will be granted.

Plaintiff has submitted a certified copy of his prison account statement for the six-month period immediately preceding the submission of his notice of appeal. A review of plaintiff's account indicates an average monthly deposit of \$22.33, and an average monthly balance of \$15.76. Accordingly, the Court will assess an initial partial filing fee of \$4.47, which is 20 percent of plaintiff's average monthly deposit. 28 U.S.C. § 1915(b).

Additionally, the Court notes for plaintiff's benefit that the order that he is attempting to appeal is not a final, appealable order. The United States Court of Appeals for the Eighth Circuit may dismiss the appeal for lack of jurisdiction because that court generally has jurisdiction over final orders. 28 U.S.C. § 1291. As a result,

plaintiff may wish to seek to withdraw his appeal from the United States Court of Appeals for the Eighth Circuit. If plaintiff wishes to continue with his appeal, however, he must pay the initial partial filing fee within 30 days of the date of this Memorandum and Order.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #18] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$ 4.47 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an appeal in this case.

Dated this 22nd Day of May, 2007.

Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE